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November 1, 2004

VIA HAND DELIVERY

Chairman Pat Miller
c/o Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful In Furnishing Water Service to Its Customers, Docket No. 04-00288.*

Dear Chairman Miller:

Enclosed please find the original and thirteen (13) copies of a *proposed* Protective Order for filing in the above-referenced docket.

Should you have any questions with respect to this filing, please do not hesitate to contact me at the telephone number listed above.

Very truly yours,



R. Dale Grimes

RDG/tn
Enclosure

cc: Timothy C. Phillips, Esq. (w/ enclosures)
Henry Walker, Esq. (w/ enclosures)
Michael A. McMahan, Esq. (w/ enclosures)
Richard Collier, Esq. (w/ enclosures)
Ms. Jean A. Stone (w/enclosures)

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Mr. Paul Diskin (w/ enclosures)
Mr. Michael A. Miller (w/ enclosures)
T. G. Pappas, Esq. (w/ enclosures)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**PETITION OF TENNESSEE
AMERICAN WATER COMPANY TO
CHANGE AND INCREASE CERTAIN
RATES AND CHARGES SO AS TO
PERMIT IT TO EARN A FAIR AND
ADEQUATE RATE OF RETURN ON
ITS PROPERTY USED AND USEFUL
IN FURNISHING WATER SERVICE
TO ITS CUSTOMERS**

PROTECTIVE ORDER

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as CONFIDENTIAL INFORMATION, shall mean documents, testimony, or information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential commercial information, confidential research, development or other sensitive information, and which has been specifically designated by the producing party. A producing party is defined as the party creating the CONFIDENTIAL INFORMATION as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order. Documents containing CONFIDENTIAL INFORMATION shall be conspicuously and specifically marked as CONFIDENTIAL on each page containing confidential information and

on the cover page with the accompanying page numbers listed either on the cover or on a subject index page. The document must be produced in a way that will clearly identify to others that it contains CONFIDENTIAL INFORMATION. The document must be accompanied by proof of confidentiality, that is, an affidavit showing the cause of protection under this Order. The Affidavit may be reviewed by the Pre-Hearing Officer, Administrative Law Judge or the Authority for compliance with this paragraph. Any document so designated shall be handled in accordance with this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties which are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. CONFIDENTIAL INFORMATION shall be disclosed only to the following persons:

- (a) counsel of record for the parties in this case and associates, secretaries, and paralegals actively engaged in assisting counsel of record in this and the designated related proceedings;
- (b) in-house counsel for the parties;
- (c) officers, directors, or employees of the parties, including employees of the Office of the Tennessee Attorney General; provided, however, that CONFIDENTIAL INFORMATION shall be shown only to those persons having a need to know;
- (d) TRA Directors and members of the staff of the TRA;
- (e) outside consultants and expert witnesses employed or retained by the parties or their counsel, who have access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this docket, provided that to the extent that any party seeks to disclose CONFIDENTIAL INFORMATION to any outside consultant or expert witness

who is expected to testify on that party's behalf, the party shall give five (5) days written notice to the producing party of intention to disclose CONFIDENTIAL INFORMATION. During such notice period, the producing party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the Tennessee Regulatory Authority, the Pre-Hearing Officer, the Administrative Law Judge or court rules on the motion. Any such motion shall be filed within three (3) days after service of the notice. Any response shall be served within three (3) days after service of the motion. Pre-Hearing conferences may be called to confer with the parties on the Motions to Limit Disclosure. All service shall be by hand delivery or by facsimile.

Under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to or discussed with anyone associated with the marketing of services in competition with the products goods or services of the producing party.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any of the authorized persons, the counsel representing the party who is to receive the CONFIDENTIAL INFORMATION shall provide a copy of this Order to the recipient Director, staff member, employee, officer, or director, who shall be bound by the terms of this Order. Prior to disclosure of CONFIDENTIAL INFORMATION to any outside consultant or expert witness employed or retained by a party, counsel shall provide a copy of this Order to such outside consultant or expert witness, who shall sign an affidavit in the form of that attached to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the documents stamped CONFIDENTIAL constitutes a violation of this Order. This affidavit shall be signed in the presence of and be notarized by a notary public. Counsel of record for each party shall provide the producing party a copy of each such Affidavit and shall keep the Affidavits executed by the parties' experts or consultants on file at their respective offices.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing

such documents, such failure shall not constitute a waiver of confidentiality, provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. In no event shall the TRA be liable for any claims or damages resulting from the disclosure of a document while not so designated as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and such failure is not discovered in time to provide five (5) day notification to the recipient of the CONFIDENTIAL nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing Conference called for the purpose or at the Hearing on the merits may request designation of such documents as CONFIDENTIAL, and if the motion is granted by the Pre-Hearing Officer, Administrative Law Judge, or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Tennessee Regulatory Authority, the Pre-Hearing Officer or Administrative Law Judge may also, at his or her discretion, either before or during the Pre-Hearing Conference or hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained

therein, shall be filed with the TRA in sealed envelopes marked CONFIDENTIAL and labeled to reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter, and this Protective Order. The envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA, Pre-Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL without obtaining an order of the TRA, Pre-Hearing Officer or Administrative Law Judge, provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the applicable Rules of Evidence and to such future orders as the TRA, the Pre-Hearing Officer, or the Administrative Law Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, prior to the hearing on the merits of the case in the manner designated previously in this Order, of the proposed use; and shall advise the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and the producing party before use of such information during witness examinations so that appropriate measures can be taken by the TRA, the Pre-Hearing Officer, or the Administrative Law Judge to protect the confidential nature of the information.

9. Except for documents filed with the TRA, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files

marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

11. Any party may contest the designation of any document or information as CONFIDENTIAL or PROTECTED SECURITY MATERIALS by filing a motion with the TRA, Pre-Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents, information, or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS, however, shall be maintained as such until the TRA, the Pre-Hearing Officer, the Administrative Law Judge, or a court orders otherwise. A Motion to contest must be filed not later than fifteen (15) days prior to the Hearing on the Merits. Any Reply seeking to protect the status of their CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS must be received not later than ten (10) days prior to the Hearing on the Merits. Motions made and subsequent Replies received within the ten (10) days prior to the hearing on the Merits shall be presented to the Authority at the Hearing on the merits for a ruling.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality.

13. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL pursuant to the terms of this Order.

14. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL and all copies thereof shall be returned to counsel for the party who produced (or originally created) the filings, exhibits and other materials within fifteen (15) days or counsel in possession of such documents shall certify to counsel for the producing party that all the filings, exhibits and other materials, plus all copies or extracts from the filings, exhibits and other materials and all copies of the extracts from the filings, exhibits and other materials thereof have been destroyed. Subject to the requirements of Paragraph 7 above, the TRA may retain copies of information designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS as may be necessary to maintain the record of this cause intact.

17. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified.

18. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

19. In addition to the other provisions of this Order, Tennessee American Water Company and its affiliates ("the Company") may designate as PROTECTED SECURITY MATERIALS documents and information related to security measures undertaken to protect the public health and safety. The Company shall provide access to PROTECTED SECURITY MATERIALS only to authorized representatives of the TRA Staff and Intervenors in this Docket. Authorized representatives shall be limited to the following: with respect to the TRA Staff, any Director or Senior Policy Advisor as well as TRA Staff members named and authorized by order of the Pre-Hearing Officer; and with respect to any other party, two counsel of record and a single other person, employed by or under contract to the party, authorized by that party in a written certification mutually agreeable to the parties.

20. The Company shall provide access by an Authorized Representative to PROTECTED SECURITY MATERIALS only after such Authorized Representative has executed the affidavit attached to this Order and provided a copy to the Company. Except with consent of the Company: (i) access shall be at the offices of the Company or its counsel of record and under the supervision of the Company; (ii) PROTECTED SECURITY MATERIALS shall not be removed from the offices of the Company or its counsel; and (iii) no copies shall be provided to an Authorized Representative except as provided herein. Authorized Representatives may make notes or memoranda from a review of the PROTECTED SECURITY MATERIALS and may remove such notes and memoranda. In all other respects such notes and memoranda shall remain PROTECTED SECURITY MATERIALS and subject to the provisions

hereof. PROTECTED SECURITY MATERIALS shall be used only to assist TRA staff or any other party to prepare for or to try this proceeding and shall not be used for any other purpose in this or any other jurisdiction.

21. Except as provided in this Order, the contents of PROTECTED SECURITY MATERIALS to which the TRA staff or other party is given access, and any notes, memoranda, or any form of information or opinions regarding or derived from the PROTECTED SECURITY MATERIALS shall not be disclosed to anyone other than an Authorized Representative in accordance with the Order; except that an Authorized Representative may disclose his or her conclusions or findings solely within, and for the purposes of, this proceeding and in accordance with this Order. PROTECTED SECURITY MATERIALS shall not otherwise be published, disclosed or divulged except as expressly provided herein. The TRA staff, and any other party shall treat all notes and memoranda or opinions regarding or derived from the PROTECTED SECURITY MATERIALS as highly confidential and shall keep them in a secure location with access limited to an authorized representative and the contents of PROTECTED SECURITY MATERIALS and any information derived from them shall be considered highly confidential, and shall not be deemed public records. The TRA staff, any party, hearing officer, or the TRA may discuss any position or conclusion regarding security expenditures and testimony in Briefs, Orders, Pleadings, or hearings in this proceeding in accordance with this Order.

22. Within one month from the conclusion of this proceeding or any judicial review proceedings involving security related expenditures, the TRA staff and any party will either return any PROTECTED SECURITY MATERIALS, any notes or memoranda related thereto and any copies thereof to the Company or certify to the Company in writing that all such copies

have been destroyed. Any electronic copies of PROTECTED SECURITY MATERIALS made by Authorized Representatives shall be eliminated.

23. The Attorney General has authority to enter into non-disclosure agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

24. The Attorney General agrees to keep the CONFIDENTIAL INFORMATION in a secure place and will not permit them to be seen by any person who is not an employee of the State of Tennessee, the Office of the Attorney General and Reporter or a person who has signed a Non-Disclosure Agreement.

25. The Attorney General may make copies of the CONFIDENTIAL INFORMATION or any portion thereof. To the extent permitted by state and federal law, regulations and rules, all notes utilizing supporting information shall be subject to the terms of this Protective Order to the extent factual assertions are derived from the supporting information.

26. The Attorney General will provide timely notice of filing or disclosure in the discharge of the duties of the Office of the Attorney General and Reporter, pursuant to Tenn. Codes Ann. § 10-7-504(a)(5)(C), so that Tennessee American Water Company may take action relating to disclosure.

27. The obligations of the Attorney General under this Protective Order are further subject to the State's public records act and other open records statutes. Nothing in this Protective Order is intended to violate the State's Public Records Act or Freedom of Information Act. In the event that the Attorney General is served with a subpoena, public records, freedom of information act request, or other request that calls for the production of CONFIDENTIAL INFORMATION by Tennessee American Water Company, the Attorney General, will notify

Tennessee American Water Company by notifying the undersigned of the existence of the subpoena, public records request, FOIA request, or other request, at least five (5) business days before responding to the request, as long as the Attorney General is able to respond to the request within a reasonable time. The Attorney General may elect to wait to produce such information as allowed by state law in order to provide Tennessee American Water Company an opportunity to challenge said subpoena or request or to make arrangements to preserve the confidentiality of the CONFIDENTIAL INFORMATION by Tennessee American Water Company that is subject to such request.

28. The designation of any information, documents or things in accordance with this Protective Order as constituting or containing confidential or proprietary information and the Attorney General's treatment of such material as confidential or proprietary in compliance with this Protective Order is not an admission or agreement by the Attorney General that the material constitutes or contains CONFIDENTIAL INFORMATION and shall not be deemed to be either a waiver of the State's right to challenge such designation or an acceptance of such designation. Tennessee American Water Company agrees to label information, documents or things provided to the Attorney General as CONFIDENTIAL INFORMATION if it has a good faith basis for the claim. Tennessee American Water Company will upon request of the Attorney General provide a written explanation of the details that support its CONFIDENTIAL INFORMATION within five (5) days of a written request. Tennessee American Water Company also specifically agrees that it will not label any documents as confidential or proprietary if the documents:

- (a) have been distributed to the public, consumers or others; or
- (b) are not maintained by Tennessee American Water Company as confidential commercial information or trade secrets.

29. All information, documents and things produced in accordance with this Protective Order may be disclosed in testimony or offered into evidence at any TRA or court hearing, trial, motion or proceeding of this matter, subject to applicable rules of evidence. Tennessee American Water Company agrees to stipulate to the authentication of the materials in any such proceeding.

30. Nothing in this Protective Order shall prevent the Attorney General from using the CONFIDENTIAL INFORMATION received for investigative purposes. Additionally, nothing in this Protective Order shall prevent the Attorney General from informing third parties of the fact of an investigation as needed to conduct the investigation. Without limiting the scope of this paragraph, nothing in this Protective Order shall prevent the Attorney General from contacting consumers whose names were provided by the company or from discussing with a consumer any materials that he/she allegedly received from Tennessee American Water Company or confirming that a consumer actually received the materials.

31. Nothing in this Protective Order is intended to restrict or alter federal or state laws, regulations or rules.

32. The terms of the foregoing paragraphs 23 through 31 do not apply to PROTECTED SECURITY MATERIALS as set forth in paragraphs 19 through 22 of this Order.

33. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within (14) days from and after the date of this Order.

34. Any person who has signed a non-disclosure certificate or is otherwise bound by the terms of this Order shall continue to be bound by this Order and/or certificate even if no longer engaged by the TRA or Intervenor.

35. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

HEARING OFFICER

TENNESSEE-AMERICAN WATER
COMPANY

By:

P. J. Thomas

CHATTANOOGA MANUFACTURERS
ASSOCIATION

By:

Henry Walker

*by RDG
w/permission*

CITY OF CHATTANOOGA, TENNESSEE

CONSUMER ADVOCATE AND
PROTECTION DIVISION OF THE OFFICE
OF THE TENNESSEE ATTORNEY
GENERAL

By:

Michael A. McMahon

*by RDG
w/permission*

Timothy C. Phillips

*by RDG
w/permission*

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF TENNESSEE
AMERICAN WATER COMPANY TO
CHANGE AND INCREASE CERTAIN
RATES AND CHARGES SO AS TO
PERMIT IT TO EARN A FAIR AND
ADEQUATE RATE OF RETURN ON
ITS PROPERTY USED AND USEFUL
IN FURNISHING WATER SERVICE
TO ITS CUSTOMERS**

Docket No. 03-00118

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

I have reviewed the Protective Order entered in the above-captioned matter and agree to abide and be bound by its terms. I understand that unauthorized disclosure of documents stamped CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS will be a violation of the Order.

DATE

NAME

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public, _____, with whom I am personally acquired, who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, 2003.

Notary Public

My Commission Expires:
